

FISHER & PHILLIPS LLP

430 Mountain Avenue

Murray Hill, New Jersey 07974

(908) 516-1050

Attorneys for Defendant

Attorney of Record: Kathleen McLeod Caminiti

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ROBERT S. CONRAD, SR.,

Plaintiff,

vs.

THE WACHOVIA GROUP LONG-
TERM DISABILITY PLAN,

Defendant.

Civil Action No. 1:08-cv-05416-RMB-AMD

**CERTIFICATION OF JAMES L.
BEAVER IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

I, James L. Beaver, of full age, do hereby certify as follows:

1. I am the Health & Welfare Benefits Manager for Wachovia Corporation ("Wachovia") and a member of the Wachovia Corporation Safety and Disability Benefits Committee. As such, I am familiar with the facts in this case, and I make this certification based on the records maintained by Wachovia in the ordinary course of business with respect to the disability claims filed by plaintiff Robert S. Conrad Sr. ("Conrad").

A. Background Regarding Wachovia's STD and LTD Plans.

2. Wachovia Corporation sponsors group health and welfare plans, including a Short-Term Disability ("STD") Plan and a Long-Term Disability ("LTD") Plan, which provide coverage to eligible employees of Wachovia Securities, LLC.

3. The Liberty Life Assurance Company of Boston ("Liberty") is the Claims Administrator of Wachovia's STD and LTD Plans. Appeals from Liberty decisions are handled by the Wachovia Corporation Safety and Disability Benefits Committee ("Committee").

4. All employees of Wachovia Securities, LLC are provided with a Summary Plan Description ("SPD") for both the Wachovia Corporation STD Plan and the Wachovia Corporation LTD Plan, respectively, through electronic access via the *My Wachovia Benefits* website which is accessible to all employees via the *Your Benefits Resources* link.

5. The SPD website describes in detail the terms of the STD and LTD Plans. The SPD also directs employees to the official plan documents that legally govern the operation of the STD and LTD Plans. Under the section entitled, "Your Rights Under ERISA," there is information provided on how to request copies of plan documents from the Plan Administrator.

6. Attached hereto as Exhibit A is a true and correct copy of the 2003 SPD for the STD and LTD Plans.

7. Attached hereto as Exhibit B is a true and correct copy of the 2003 Wachovia Corporation STD Plan.

8. Each year Wachovia employees are provided access to an Employee Handbook, via the company intranet, which summarizes the current STD and LTD Plans and which contains electronic links to the SPD for the Plans.

9. Attached hereto as Exhibit C is a true and correct copy of the STD portion of the 2003 Wachovia Corporation Employee Handbook.

10. Attached hereto as Exhibit D is a true and correct copy of the 2004 Wachovia Corporation STD Plan.

11. Attached hereto as Exhibit E is a true and correct copy of the STD/LTD portion of the 2004 Wachovia Corporation SPD.

12. Attached hereto as Exhibit F is a true and correct copy of the STD portion of the 2004 Wachovia Corporation Employee Handbook available online to all employees.

13. Attached hereto as Exhibit G is a true and correct copy of the 2004 Wachovia Corporation LTD Plan.

B. Plaintiff's 2004 Claim for STD.

14. Plaintiff Robert S. Conrad, Sr. became employed by Wachovia Securities, LLC as a Financial Advisor with the title of Senior Vice President when First Union Corporation and Wachovia Corporation merged on September 1, 2001.

15. Conrad worked for Wachovia on a full-time basis until August 2004 at which time he commenced a short-term disability leave.

16. Plaintiff was a Financial Advisor with more than one year of service whose earnings varied from month to month, so his BEC was determined by calculating the sum of his rolling 12-month earnings and then computing an average monthly rate of compensation. (See Exhibit D).

17. The "Rolling 12-Month Amount" is determined as of the last business day of each month an employee is eligible to participate in the plan. Plaintiff became eligible for STD benefits on August 4, 2004, so his Rolling 12-Month Amount was calculated for the 12 months ending on July 31, 2004. (*Id.*).

18. The sum of Plaintiff's rolling 12-Month compensation was \$63,931.83 yielding a monthly average for BEC purposes of \$5,327.65 per month. (*See* Exhibit H attached hereto which is a true and correct copy of Plaintiff's BEC calculations).

19. Between August 3, 2004 and January 31, 2005 (*i.e.* the maximum 26 weeks of benefits provided under Wachovia's STD Plan), Plaintiff received full benefits pursuant to the terms of the STD Plan.

C. Plaintiff's 2004 LTD Claim.

20. Pursuant to the terms of Wachovia's 2004 LTD Plan, after satisfying the 26-week elimination period, an individual becomes eligible to receive LTD benefits. (*See* Exhibit G, § 1.1 Definitions, p. 5).

21. Approximately 17 weeks into the LTD elimination period, Liberty begins to review an STD recipient's file, and if appropriate, will automatically transition an STD claim to the LTD program, upon expiration of the full 26 week elimination period.

22. Attached hereto as Exhibit I is a true and correct copy of a letter, dated February 1, 2005, from Denise S. Welsh, Liberty Mutual, to Robert Conrad, approving plaintiff's claim for LTD benefits, a copy of which appears in the Wachovia benefit appeal records maintained by the Committee (Bates numbered Liberty/Coprad 1133-1135).

23. Between February 1, 2005 and October 9, 2005, Plaintiff received full LTD benefits pursuant to the terms of Wachovia's 2004 LTD Plan, *i.e.* 66 2/3% of his monthly BEC of \$5,327.65, which computes to \$3,551.77 per month. (*See* Exhibits G and I *supra*).

24. During the period of October 10, 2005 through May 23, 2007, Plaintiff received partial disability benefits pursuant to Wachovia's 2004 LTD Plan.

25. Attached hereto as Exhibit J is a true and correct copy of a letter, dated June 26, 2008, from Thomas J. Hagner, Esq. to James Beaver.

26. Attached hereto as Exhibit K is a true and correct copy of a letter, dated July 25, 2008, from James L. Beaver to Thomas J. Hagner, Esq.

27. Attached hereto as Exhibit L is a true and correct copy of a letter, dated August 20, 2008, from Thomas J. Hagner, Esq. to James Beaver (Bates numbered *Liberty/Conrad 93-94*).

28. Attached hereto as Exhibit M is a true and correct copy of a letter, dated August 28, 2008, from James L. Beaver to Thomas J. Hagner, Esq. (Bates numbered *Liberty/Conrad 90-92*).

29. Plaintiff never applied for disability benefits under Wachovia's 2008 STD and LTD Plans.

Pursuant to 28 U.S.C. §1746, I certify under penalty of perjury that the foregoing is true and correct.



JAMES L. BEAVER

Dated: January 12, 2010